IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 1918 of 2007(C)

AGAINST THE ORDER IN EP 75/2005 IN
OS.21/2001 of MUNI-MAGI.COURT,PATTAMBI

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PETITIONER:

MUHAMMED @ ASSAN MUHAMMED,
S/O.KUNHALAN, KOTTAVALAPPIL,
KUMARANELLOOR AMSOM DESOM,
OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENT:

NARAYANAN, S/O. KODANGATTU THACHU KURUP
KURARANELLUR AMSOM, ERAVAKKAD DESOM,
OTTAPALAM TALUK.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1918 of 2007(C)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF E.P.NO.75/01 IN O.S.NO.21/01 OF MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P2: COPY OF THE OBJECTION FILED IN E.P.75/05 IN O.S.NO.21/01 OF MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P3: COPY OF THE AGREEMENT DATED 16.4.1999 EXECUTED BY THE PETITIONER IN FAVOUR OF HIS WIFE NABEESUMMA.

EXT.P4: COPY OF SALE DEED NO.1220/05 DTD. 13.9.2005 OF S.R.O, KUMARANELLOOR EXECUTED BY THE PETITIONER.

EXT.P5: COPY OF THE ORDER DTD.31.7.2006 IN E.P.NO.75/05 IN O.S.NO.21/01 OF MUNSIFF-MAGISTRATE COURT, PATTAMBI.

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BKN // TRUE COPY//

P.A TO JUDGE.

M.N.KRISHNAN, J
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W.P.C.NO. 1918 OF 2007
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Dated this the 29th Day of June, 2007.
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J U D G M E N T

This Writ Petition is filed seeking to quash the order of the learned Munsiff, Pattambi, in E.P.No.75/2005. The Execution Petition is one for realisation of the amount by detaining the judgment debtor in civil prison for the reason that though he is having sufficient means to pay, he has refused to pay the amount and so he be arrested and detained in civil prison. The judgment debtor entered appearance and contended that he has no means to pay and that he is not neglecting or refusing to pay the amount. So arrest need not be ordered. But at the enquiry state, the matter proceeded in another angle, for the reason, that the property which the judgment debtor has, was transferred in favour of his wife in the year 2005. The court entered into an enquiry regarding the genuineness of the transaction. I feel, in an Execution Petition where it is specifically averred that the question to be considered is that of means and neglect to pay. The enquiry has to be made only within that four corners and not

extraneous to that. It is true that, when a judgment debtor transfers his property with an intend to delay of defeat the creditors, the decree holder has a remedy, and it is the provision under Section 53 of the Transfer of Property Act, which entitles the decree holder to challenge that document in appropriate proceedings even in execution applications. Now a perusal of the documents produced would show that there was a previous agreement and only on the basis of that and on account of the non-payment of the amount stipulated in the agreement, the document was executed. I am afraid that the court below has entered into a scope of enquiry which was not contemplated in a petition filed under Order XXI Rule 37 of the Code of Civil Procedure. Therefore I set aside that order. But at the same time the learned counsel for the respondent/decree holder submits that sufficient opportunity be given to her client in order to adduce further evidence to prove the means of the judgment debtor and his intentional and deliberate act of non-payment. An opportunity therefore is given and therefore the order under challenge is set aside and the matter is remanded back to the executing court for consideration of the factum of means and also

the neglect on the part of the judgment debtor to pay the amount. But I make it clear, if circumstance exist, and the decree holder wants to invoke the benefit under Section 53 of the Transfer of Property Act, he may do it in appropriate proceedings or by amending the execution application as permissible under law.

The Writ Petition is disposed of accordingly.

M.N.KRISHNAN
JUDGE

bkn